

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

Crl.MC.No. 2087 of 2004(A)

CC.1067/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM
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PETITIONERS/ACCUSED NOS.2 & 3:

- 1. THOMAS JACOB, EDITOR, MALAYALA MANORAMA,
PANAMPILLY NAGAR, COCHIN-16.**
- 2. MAMMEN VARGHESE, PRINTER & PUBLISHER,
MALAYALA MANORAMA, PANAMPILLY NAGAR,
COCHIN-16.**

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS/COMPLAINANT & IST ACCUSED & STATE:

- 1. SAJI CHERUARINPOOR, 14/2526, SAJI VILLA,
ELAMAKKARA P.O., COCHIN-26.**
- 2. RAMESH CHANDER, BAJAJ AUTO FINANCE
LIMITED, IIND FLOOR, CHACKO'S TOWER,
JEWS STREET, LPULLEPADY, COCHIN-35.**
- 3. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSCUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

**R3 BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU
R1 & R2 BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 17/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

K.P. Balachandran, J.

Crl.M.C.No. 2087 of 2004

ORDER

Petitioners are Accused Nos.2 and 3 in C.C.No. 1067/01 on the file of the Judicial First Class Magistrate's Court-II, Ernakulam, registered on the basis of a complaint filed by the first respondent, alleging commission by them, along with the second respondent in the case, of offence punishable under Section 500 of the IPC read with Section 34 thereof. Despite service of notice, the first respondent/complainant has not entered appearance to resist this Crl.M.C. The prayer in this Crl.M.C. is to quash the proceedings in C.C.No.1067/01 aforesaid as far as the petitioners are concerned.

2. As per Annexure-B advertisement the second respondent/first accused issued a publication, for the information of the public, containing the photographs, names and addresses of the defaulters in repayment of the loans availed of by them for the purchase of Bajaj vehicles or other household

articles. It was so published consequent on dishonour of the cheques issued by them in repayment of the loan amounts availed of by them. The first respondent/complainant is one among those defaulters. As far as he is concerned, he had availed of a loan for the purchase of Kenwood VCD and he has no case that he has repaid the amount or that the cheque issued by him had not been dishonoured on presentation.

3. Counsel for the petitioners submits that the Honourable Supreme Court has, in more than one decision, deprecated the practice of forcibly taking back possession of vehicles and other articles purchased by availing of loans and that therefore, the petitioners never thought that the advertisement, given by the second respondent for publication, will in any way be a publication, which can be complained of as defamatory, when the second respondent owns the responsibility of the facts stated, viz., that the photographs, names and addresses published, are all of those, who have

availed of loans, defaulted repayment of loans and the cheques issued by them were dishonoured as well and further that the publication obviously was intended also to see that innocent bona fide purchasers, who may purchase articles from them, will not be put to loss and harassment. The second respondent/first accused, however, is prepared also to face the complaint and the petitioners are only Accused Nos.2 and 3, who are the Editor and the Printer and Publisher of the Malayala Manorama daily, in which the publication has appeared. Counsel for the petitioners stresses his argument also on the fact that the first respondent/complainant has no case at all in the complaint that he has paid off the amounts at least after Annexure-B publication and before filing of the complaint. Counsel for the petitioners also relied on the decision of the Madhya Pradesh High Court in **Kum.Archana Chauhan v. State Bank of India, Jabalpur** (AIR 2007 MP 45), wherein, that court held that publication of photographs of borrowers cannot

be said to be an impermissible mode of recovery of amounts and that it cannot be complained of as being defamatory.

4. Considering the entire circumstances of the case, I am of the view that the first respondent/complainant, who has not repaid the amounts, has no locus standi to file a complaint at least as against Accused Nos.2 and 3, who are the petitioners herein, complaining of any defamation, when it was at the instance of the second respondent/first accused that the petitioners have published Annexure-B advertisement, the truth of which, however, is not assailed in the complaint.

In the result, I quash Annexure-A complaint as far as the petitioners, who are Accused Nos.2 and 3, are concerned, allowing this Cr1.M.C.

17th December, 2007

(K.P.Balachandran, Judge)

tkv